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ATR-KIM ENG FINANCIAL CORPORATION  
and ATR-KIM ENG CAPITAL PARTNERS,  
INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

ATR-KIM ENG FINANCIAL  
CORPORATION and ATR-KIM ENG  
CAPITAL PARTNERS, INC.,

Plaintiffs,

v.

HUGO BONILLA, MONICA ARANETA  
and DOES 1-25,

Defendants.

No. CV-07-6239 SC

PLAINTIFFS' INITIAL CASE  
MANAGEMENT CONFERENCE  
STATEMENT

Date: March 21, 2008  
Time: 10:00 a.m.  
Place: Courtroom 1, 17th Floor  
Judge: Hon. Samuel Conti

1 Plaintiffs ATR-Kim Eng Financial Corporation and ATR-Kim Eng Capital Partners,  
 2 Inc. (collectively, “ATR”) submit this Statement for the initial case management conference  
 3 in the above-captioned action. For reasons discussed below, the parties have not held case  
 4 management discussions pursuant to Rule 26 of the Federal Rules of Civil Procedure. The  
 5 parties instead have been focused on the fundamental question whether this action is in the  
 6 proper court. ATR believes this action properly belongs in front of Judge Thomas E.  
 7 Carlson in the Bankruptcy Court because he already presides over matters involving the  
 8 same parties and factual and legal issues as those presented in this action. ATR has filed an  
 9 Administrative Motion To Consider Whether Cases Should Be Related (“Administrative  
 10 Motion”) under Civil Local Rule 3-12 requesting Judge Carlson to reassign this action to  
 11 himself.<sup>1</sup> ATR requests that the Court continue the Rule 26 initial case management  
 12 conference for at least 60 days to allow time for Judge Carlson to hold a hearing, if  
 13 necessary, and rule on ATR’s Administrative Motion.

14 As background, ATR originally filed this action (the “ATR Action”) on February 2,  
 15 2007, in San Mateo County Superior Court, asserting a claim against Monica Araneta  
 16 (“Araneta”) and Hugo Bonilla (“Bonilla”) for fraudulent transfer of certain real property.  
 17 On March 16, 2007, Bonilla filed a Chapter 7 bankruptcy petition that is now pending before  
 18 Judge Carlson as Case 07-30309. As a result of Bonilla’s bankruptcy case, activity in the  
 19 ATR Action ceased. The Trustee in Bonilla’s bankruptcy case has filed an adversary  
 20 proceeding against Araneta (the “Trustee Action”) asserting the same fraudulent transfer  
 21 claim involving the same real property that is asserted in the ATR Action. The Trustee  
 22 Action is also pending before Judge Carlson as Adversary Proceeding No. 07-03081.

23 On November 16, 2007, upon stipulation of the Trustee and ATR, Judge Carlson  
 24 modified the automatic stay applicable to the ATR Action to permit its removal from the San  
 25 Mateo County Superior Court to the Bankruptcy Court. To effect the removal, ATR filed a  
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27 <sup>1</sup>In accordance with Civil Local Rule 3-12, ATR has lodged copies of its  
 28 Administrative Motion and all related papers with this Court.

1 notice of removal in this District Court. 28 U.S.C. section 1452(a), which governs removal  
 2 of state court actions related to bankruptcy cases, requires that a party remove the action “to  
 3 the district court for the district where such civil action is pending.” *See also* Fed. R. Bankr.  
 4 Pro. Rule 9027 (“A notice of removal shall be filed with the clerk for the district and  
 5 division within which is located the state or federal court where the civil action is pending”).  
 6 ATR then filed the Administrative Motion to request reassignment of the removed ATR  
 7 Action to Judge Carlson. Civil Local Rule 3-12(b) requires that ATR file the Administrative  
 8 Motion before Judge Carlson because he has the earlier related case (*i.e.*, the Trustee  
 9 Action).

10 ATR attempted to obtain stipulations from all involved parties — the Trustee, Bonilla  
 11 and Araneta — to reassignment of the ATR Action to Judge Carlson before and after filing  
 12 the Administrative Motion. After discussion and negotiation of terms, ATR, the Trustee and  
 13 Araneta executed a stipulation agreeing to reassignment of the ATR Action to Judge  
 14 Carlson. Bonilla, however, has refused to execute the stipulation. On March 11, 2008, ATR  
 15 submitted a letter to Judge Carlson apprising him of the status of the Administrative Motion  
 16 and Bonilla’s dissenting position. ATR also requested Judge Carlson to rule on the  
 17 Administrative Motion or, in the alternative, schedule a hearing if he wished to hear further  
 18 argument from the parties.

19 Accordingly, ATR requests that the Court continue the Rule 26 initial case  
 20 management conference in this action for at least 60 days to allow time for Judge Carlson to  
 21 hold a hearing, if necessary, and rule on ATR’s Administrative Motion.

22 Dated: March 14, 2008.

HOWARD RICE NEMEROVSKI CANADY  
 FALK & RABKIN  
 A Professional Corporation

23 By: \_\_\_\_\_/s/  
 24 LONG X. DO

25 Attorneys for Plaintiffs ATR-KIM ENG  
 26 FINANCIAL CORPORATION and ATR-KIM  
 27 ENG CAPITAL PARTNERS, INC.  
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